



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Release Number: **201407015**
Release Date: 2/14/2014
Date: November 19, 2013
UIL Code: 501.03-00
501.33-00
501.36-03

Contact Person:
Identification Number:
Contact Number:
Employer Identification Number:
Form Required To Be Filed:
Tax Years:

Dear :

This is our final determination that you do not qualify for exemption from federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Since you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

Letter 4038 (CG) (11-2005)
Catalog Number 476328

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Kenneth Corbin
Acting Director, Exempt Organizations

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Date: September 30, 2013

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

LEGEND:

B= date
C= state
D= project name
E= book name
F= individual
z = dollar amount

UIL:

501.03-00
501.33-00
501.36-03

Dear :

We have considered your application for recognition of exemption from federal income tax under Internal Revenue Code section 501(a). Based on the information provided, we have concluded that you do not qualify for exemption under Code section 501(c)(3). The basis for our conclusion is set forth below.

Issues

Do your activities further an exempt purpose consistent with exemption under section 501(c)(3) of the Code? No, for the reasons stated below.

Do your net earnings primarily benefit the private interests of a commercial publisher thus precluding exemption under section 501(c)(3) of the Code? Yes, for the reasons stated below.

Facts

You incorporated on B pursuant to the non profit corporation laws in the State of C. The purposes for which you were formed are "to oversee the production, publication, and distribution of materials related to" a project known as D. The project, D, initiated by your founder's ministry, was started to translate a score of the New and Old Testament

Letter 4036 (CG) (11-2011)
Catalog Number 47630W

books into one English Bible version known as E. The promotion and publicity for the first volume of E is the first and primary objective of project D.

You did not provide a list of positioned officers/directors with your application for exemption, however, F listed himself as president/chairman/editor and you have indicated two additional board members as being two of F's sons. You stated you are in the process of expanding your current board and have added two more unrelated members. While no board member will be paid for their intellectual work, they may be hired for operational duty, though currently there are no paid staff.

Prior to your formation, your founder, F, had used a segment of the translation project, D, in F's self-employed missionary work. F, "worked on the version of E for over 26 years as a ministry, receiving not a penny." You emphasize your religious convictions by stating that "In Bible work and Bible materials all work is done to the Lord as ministry". Since incorporating, you described yourself as a service organization for the project, D. You will service the office, staff, production and distribution offices associated with the translation project, D. You also maintain a website that publicizes E and the methods used in the translation process that make E a unique version of the Bible.

Your future activities include the publication of study guides, new editions of E and other Bible related reference books, training classes and conferences and public meetings. You hope to develop a home office and to hire staff and translators for production of other Bible commentaries.

The publication, distribution and retailing of E are in the hands of a for-profit publisher. The terms and conditions of your three year publishing agreement states the "PUBLISHER shall determine the details of publication, including the appearance, price, production and manufacturing of the WORK" (E). Your publishing agreement allows the publisher the right to use, display, promote market, distribute, exhibit and make excerpts from the work (E) in order to facilitate the promotion, marketing distribution and sales of E. "PUBLISHER will make four royalty payments per year, if earned, to AUTHOR" (you). You clarified that you own the copyrights to E and receive 20% of the royalties for print copies. You expect to earn the majority of your income from book sales. The for-profit publisher receives 80% of the royalties from the print sale of E. For eBooks or any audio versions sold you will receive 50%.

Despite being founded over ten years ago you indicated the only actual income was received last year in the form of a single z dollars donation. You did submit projections for the next three years. Any income you earn from the sale of E will be used for your cost of operations, including payroll for contracted authors and office expenses.

As for your obligation to the publisher you described yourself as a fledgling corporation

with no national reputation.

"The competition is mountainous." "In a Christian bookstore one will find twelve to twenty versions on the same shelves." "How do we get attention?" "We have to buy it." "The contract is for the present edition only and lasts only three years, time enough for the publisher to recoup his expenses." "We are not obligated to the for-profit publisher for any further editions, and we are not an agent for the publisher." "In short, the publication contract is our instrument to accomplish our purpose."

Your tax exemption was auto revoked due to a failure to file Form 990. You have applied to be reinstated.

Law

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the Regulations provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities in not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

Section 1.501(c)(3)-1(d)(ii) of the Regulations states that an organization is not operated exclusively for one or more exempt purpose unless it serves a public rather than a private interest. It must not be operated for the benefit of designated individuals or the persons who created it.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations assigns states it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 66-104, 1966-1 CB 135: A nonprofit organization which makes funds available to authors and editors for preparing teaching materials and writing textbooks, and, under the terms of the contract with the publisher, receives royalties from sales of the published

materials and then shares them with those individuals, does not qualify for exemption from federal income tax as a charitable, educational or literary organization under section 501(c)(3) of the Internal Revenue Code of 1954. Although educational interests are served by the publication of better teaching materials, the facts in this case show only an enterprise conducted in an essentially commercial manner, in which all the participants expect to receive a monetary return.

Rev. Rul. 67-4, 1967-1 C.B. 121 An organization was formed for the purpose of encouraging basic research in specific types of physical and mental disorders, to improve educational procedures for teaching those afflicted with such disorders, and to disseminate educational information about such disorders, by the publication of a journal containing current technical literature relating to these disorders. The organization may qualify for exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954 if it meets prescribed conditions.

Four Criteria indicate that publishing activities are directed to the attainment of purposes specified in IRC 501(c)(3).

1. The content of the publication must be "educational";
2. The preparation of materials must follow methods generally accepted as "educational";
3. The distribution of the materials must be necessary or valuable in achieving the organization's exempt purposes; and
4. The manner in which the distribution is accomplished must be distinguishable from ordinary commercial publishing practices.

While the revenue ruling speaks only in terms of educational purposes, similar reasoning is applicable to religious publishing activities. However, religious publishing activities do not have to satisfy the methodology test, the second criterion.

Better Business Bureau of Washington, D.C., Inc. v. United States, 326 U.S. 279, (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy a claim for exemption regardless of the number or importance of truly exempt purposes.

Scripture Press Foundation v. United States Citation: 285 F.2d 800 (Ct. Cl. 1961)
The court found that the sale of religious literature was the organization's "primary concern." Even though the material was "religiously inspired," it involved the organization "directly in the conduct of a trade or business for profit." The entity's primary purpose was found to be neither religious nor educational.

The organization's assertions were found to be "entirely sincere." Throughout the organization's history, the court concluded, it had been "led by people of devout and intense religious conviction." Intensity of religious convictions was stated to not be

sufficient if the activities involved do not themselves justify tax exemption. "Piety is no defense to the assessments of the tax collector."

Christian Manner International Inc. v. Commissioner, 71 T.C. 661 (1979) The Court determined that an organization that sold books written by its founder was not entitled to exemption. In making this decision the Court found that the sale of books was the primary activity, was not in furtherance of a religious or educational benefit, and even if the publication and sale of books was in furtherance of religious or educational purposes the organization would still fail to qualify for exemption under 501(c)(3) because a substantial part of the activity it engaged in was in furtherance of a purpose to benefit its founder personally rather than to benefit the public at large and it was commercial in nature.

est of Hawaii v. Commissioner, 71 T.C. 1067 (1979). The Tax Court held that an organization that was essentially controlled by a separate commercial entity was operated for a substantial non-exempt purpose where it promoted a body of knowledge owned by that commercial entity. Whether the agreements between the parties reflected an arm's length negotiation was irrelevant to the analysis. Relevant factors included that the for-profit entity, through contractual arrangements, exerted "considerable control" over the franchisee's activities, in matters such as fees, training, scheduling, and management; that the for-profit entity's existence depended on the tax-exempt status of the franchisee, and that it was thus trading on the letter's exempt status; and that the for-profit entity benefited substantially from the franchisee's activities.

Application of Law

You are not operated exclusively for charitable, educational, or religious purposes consistent with Section 501(c)(3) of the Code nor Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations and therefore fail to meet the operational test. Specifically, the facts above indicate that you are not operated for exempt purposes but that you are operated in a commercial manner. The books you author are priced to generate a profit and are distributed and marketed in a traditional commercial manner. Further, prices are set by a for-profit publisher through a licensing agreement. Funds earned through royalties are used to cover costs including compensation for contracted authors. As a result, your services are not distinguishable from any commercial company.

You are not described in section 1.501(c)(3)-1(c)(1) of the regulations because you are not primarily engaged in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. Your primary purpose is to promote, publicize and disseminate E, resulting in payment to a for-profit publisher of either 50% or 80% of sales. This arrangement also benefits any authors of these books, and in this case, your founder, F, through the publishing and promotion of their work.

Regardless of financial gain this results in substantial private benefit to any of your authors. In addition, this arrangement substantially furthers the private business purposes of your publisher. Each of the above causes you to fail the operational test for exemption per section 1.501(c)(3)-1(d)(ii) of the regulations.

Per Section 1.501(c)(3)-1(d)(1)(ii) of the regulations, you have failed to establish that you are not organized or operated for the benefit of designated individuals by promoting and distributing a book authored by F. Further, you have not demonstrated the relationship between you, F and the publisher will not result in inurement either directly or indirectly through the sales and subsequent receipt of royalties. Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure to the benefit of private individuals.

Your publishing agreement also allows the publisher considerable control over the pricing and marketing function of your primary product, E. The fact that your product is "religiously inspired" does not demonstrate your primary purpose is either religious or educational. See, Scripture Press Foundation v. United States, supra.

Although "exclusively" does not mean "solely" or "without exception," the presence of a single nonexempt purpose, if substantial, will preclude exemption regardless of the number or importance of exempt purposes, see Better Business Bureau, above. Because you are operating in a manner similar to any private author selling work through a for profit publisher you are not regarded as "operated exclusively" for one or more exempt purposes.

You are similar to the organization described in Revenue Ruling 66-104 in that you use royalties received from the licensing agreement from sales through a publisher to further your translating operations. Similar to the ruling, although religious interests may be served by your publication, the facts in this case show only an enterprise conducted in an essentially commercial manner – promotion and publication of texts sold through a licensed agreement with a for-profit publisher with the majority of sales income retained by that publisher.

You are unlike the organization in Revenue Ruling 67-4 in that you differ from the criteria outlined in qualifying for exemption with publishing activities. The methods used in preparing and presenting your work are both religious and commercial – while translating religious texts can be both educational or religious the manner in which you market, produce and distribute those works are not. The public benefit of the distribution of your work is outweighed by the benefit received by the agreement with the publisher in the amount of royalties received through sales. Your manner of distribution is not distinguishable from ordinary commercial publishing practices - you make your publication available to the general public through regular retail outlets as determined by

your publisher. The fact that you have contracted with a for-profit publisher to compete with the "mountainous competition" in retail bookstores further demonstrates that your primary purpose is not charitable. Although your operations have been unprofitable to date, they are conducted in an ordinary commercial manner.

The commercial manner in which you operate, including the method of pricing, advertising and retail operations, in agreement with a for-profit motivated publisher does not further charitable purposes described under IRC 501(c)(3). See Christian Manner International Inc., and est of Hawaii v. Commissioner, supra. Because your operations further the non-exempt commercial purposes of your publisher you cannot be tax-exempt as a charitable IRC § 501(c)(3) entity.

Conclusion

Based on the facts and information provided, you are not organized or operated exclusively for exempt purposes. You fail the operational test, further private interests, have failed to establish your operations will not inure to insiders and are operated for substantial non-exempt commercial purposes.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, How to Appeal an IRS Decision on Tax Exempt Status.

Types of information that should be included in your protest can be found on page 1 of Publication 892, under the heading Filing a Protest. The statement of facts (item 4) must be accompanied by the following declaration:

"Under penalties of perjury, I declare that I have examined this protest statement including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts, and such facts are true, correct, and complete."

The declaration must be signed by one of your officers or trustees with personal knowledge of the facts.

Your protest will be considered incomplete without this statement.

If your representative submits a protest, a substitute declaration must be included stating that the representative prepared the protest and accompanying documents; and whether the representative knows personally that the statements of facts contained in the protest and accompanying documents are true and correct.

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at www.irs.gov, Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Internal Revenue Service
EO Determinations Quality Assurance

Deliver to:

Internal Revenue Service
EO Determinations Quality Assurance

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Kenneth Corbin
Acting Director, Exempt Organizations

Enclosure: Publication 892